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In re Patent No. 6,438,995  
Issue Date: August 27, 2002  
Application No. 09/619,286  
Filed: July 19, 2000  
Title of Invention: CLASP FOR JEWELRY  
CHAIN

MAILED

SEP 14 2012

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed January 6, 2012 requesting reconsideration of a prior decision which refused to accept under 37 CFR 1.378(b) the delayed payment of the maintenance fee for the above-identified patent. The petition is treated under 37 CFR 1.378(e).

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** final agency action within the meaning of 5 U.S.C. § 704, however, the renewed petition should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the renewed petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition filed September 14, 2011 was dismissed in a decision mailed October 6, 2011, because based upon the arguments proffered, rather than unavoidable delay, the showing of record is of a lack of diligence on the part of petitioner to maintain the patent in force. The maintenance fee was not timely paid because of petitioner's preoccupation with defending a law suit and by their own admission, they "...inadvertently allowed our payments to lapse for the maintenance of our status with the Patent Office". In this instance no steps were taken to ensure timely payment of the maintenance fee. Therefore, petitioner's lack of diligence and preoccupation with other matters which took precedence over the above-identified patent, does not constitute unavoidable delay.<sup>1</sup>

In view thereof, no evidence was provided to establish that the delay in payment of the maintenance fee was unavoidable.

<sup>1</sup> See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

For all the reasons listed above, petitioner failed to carry the burden of proof to establish to the satisfaction of the Director that the delay was unavoidable. Petitioner was advised that there is a distinct difference between an unavoidable delay which, had there been reasonable care exercised, could not have been prevented and one that was inadvertent or the result of a mistake.

Since petitioner had not provided enough information for a determination that reasonable care was in fact exercised to ensure that the maintenance fee would be paid timely and that therein the delay was unavoidable, the argument failed.

Petitioner was advised however, that a request for reconsideration carries with it a statutory petition fee payment of \$400. No such payment accompanied the request for reconsideration filed January 6, 2012. No further treatment can be given this matter on the merits and no decision will be rendered in this matter until the petition fee under 37 CFR 1.378(e) has been paid in full.

While a discussion on the merits under the unavoidable standard is not appropriate until such time as the petition fee under 37 CFR 1.378(e) has been paid in full, petitioner is advised that while the request for reconsideration is extensive, the explanation provided still does not rise to the level of unavoidable delay.

Petitioner is advised that while an explanation of all of the circumstances surrounding the creation for the idea of the invention, up to the issuance and expiration of the patent has been provided, petitioner has not provided documentation to corroborate a finding that the delay in payment of the maintenance fee was unavoidable.

The only authority we have is to consider the evidence of record in making a determination as to whether the delay was unavoidable. Without evidence to support your assertion of unavoidable delay for the periods beginning August 27, 2005 up to the present, your argument will fail.

Petitioner has noted both financial and medical issues. If that is the reason the maintenance fees were not timely paid, petitioner has not made a showing to support either of those arguments.

A showing of "unavoidable" delay based upon medical incapacitation must establish that patentee's incapacitation was of such nature and degree as to render him unable to conduct business (e.g., correspond with the Office) during the period between August 27, 2005 through the time the petition to reinstate was filed, September 14, 2011. Such a showing must be supported by a statement from patentee's treating physician, and such statement must provide the nature and degree of patentee's incapacitation during this above-mentioned period.

A showing of unavoidable delay based upon financial condition must establish that the financial condition of the patentee during the **entire** period of the delay was such as to excuse the delay.<sup>2</sup> In order to establish unavoidable delay based on financial difficulty, patentee must provide a showing of the responsible person's financial condition at the time, including income, expenses, assets, credit, and obligations, which made the delay in payment of the fee unavoidable. Patentee must provide copies of any documents or records that would confirm the financial difficulty.

**Patentee is cautioned to avoid submitting personal information in documents filed that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, patentee should consider redacting such personal information from the documents before submitting them to the USPTO.**

Further correspondence with respect to this matter should be addressed as follows:

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Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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<sup>2</sup>Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).